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mony unnecessary. *Donovan v. Boston & Maine R. Co.*, 158 Mass. 450; *Louisville & Nashville R. Co. v. Daniel*, 122 Ky. 256; *Firemen's Ins. Co. v. Seaboard, etc. Ry. Co.*, 138 N. C. 42. Copying weights from scale-tickets, since destroyed, has also been held sufficiently mechanical to dispense with the weigher's testimony. *Drumm-Flato Commission Co. v. Gerlach Bank*, 107 Mo. App. 426. Mere inferences from an established course of business have been relied on, out of mercantile necessity. *Fielder Bros. v. Collier*, 13 Ga. 496; *Continental Bank v. First Nat. Bank*, 108 Tenn. 374. But, whether or not such cases already encroach too far upon the hearsay rule, apparently none would justify admitting a dispatcher's sheet without his testimony, except where it constitutes an admission.

INSURANCE — GUARANTY INSURANCE — NATURE OF CONTRACT: RELATION TO CONTRACT OF SURETYSHIP. — The defendant company issued a contractor's bond guaranteeing the payment of all subcontractors. Certain subcontractors, to whose use the present action is brought, repeatedly extended the time of payment by agreement with the principal contractor. *Held*, that the defendant company is still liable on the bond for the principal contractor's obligations. *City of Philadelphia, to Use of Thompson v. Fidelity & Deposit Co. of Md.*, 80 Atl. 62 (Pa.).

For a discussion of the principles involved, see 24 HARV. L. REV. 568.

INTERSTATE COMMERCE — CONTROL BY STATES — PROHIBITION OF EXPORTATION OF NATURAL GAS. — An Oklahoma statute practically prohibited the transportation of natural gas, by means of pipe lines, out of the state, although domestic commerce was allowed. *Held*, that the statute is unconstitutional. *West v. Kansas Natural Gas Co.*, 31 Sup. Ct. 564; *Haskell v. Cowham*, 187 Fed. 403 (C. C. A., Eighth Circ.).

A state has no power to interfere directly with interstate commerce. *Pullman Co. v. Kansas ex rel. Coleman*, 216 U. S. 56. The absolute power of the State over its highways urged in support of the present statute, as a means of prohibiting the exportation of gas, must give way to the exclusive jurisdiction of Congress. That Congress has not legislated does not authorize the state to do so, for the original right to engage in interstate commerce, under the Constitution, can be regulated by Congress only. State laws prohibiting interstate commerce in game, however, have been sustained. *Geer v. Connecticut*, 161 U. S. 519; *New York ex rel. Silz v. Hesterberg*, 211 U. S. 31. A state statute prohibiting the taking of water from fresh-water streams to another state was held valid. *Hudson County Water Co. v. McCarter*, 209 U. S. 349. The right of the state to preserve its natural resources to itself would seem to be as great in the principal case. The interference with interstate commerce seems no more direct. But the nature of the state's property right in wild animals, and in streams, as compared with the complete private property right of the owner of natural gas reduced to possession differentiates the cases. See 25 HARV. L. REV. 76. The principal case seems clearly right. *State ex rel. Corwin v. Indiana & Ohio Oil, etc. Co.*, 120 Ind. 575.

JUDGMENTS — OPERATION AS BAR TO OTHER ACTIONS — DAMAGE TO PERSON AND PROPERTY CAUSED BY ONE NEGLIGENT ACT. — The plaintiff, while riding in his wagon, was struck by the defendant's trolley car and injured personally. His horse and wagon were also damaged, for which he recovered judgment. *Held*, that this does not bar an action for the personal injuries. *Ochs v. Public Service Ry. Co.*, 80 Atl. 495 (N. J., Ct. Err. and App.).

This case reverses the decision of the lower court, criticised in 24 HARV. L. REV. 492.

LANDLORD AND TENANT — REPAIR OF PREMISES — TORT LIABILITY OF LANDLORD. — The defendant leased premises to a tenant for purposes of public

amusement, retaining the right to enter and make repairs, but not covenanting to repair. The plaintiff, while lawfully on the premises, was injured, owing to the premises having, by reason of negligence, become dangerous. *Held*, that the plaintiff has no cause of action against the defendant. *Shapiro v. Wendover Hall Co.*, 45 N. Y. L. J. 2082 (N. Y., Sup. Ct., Aug., 1911).

In the absence of an agreement to repair, a landlord is not liable for personal injuries to a tenant or a member of the tenant's family, guest, or servant, who stands in the same position as the tenant, due to the defective condition of the demised premises, where the defects are not hidden defects existing at the time of letting, known to him and unknown to the tenant. *Akerley v. White*, 58 Hun (N. Y.) 362; *Galvin v. Beals*, 187 Mass. 250. And even if he has agreed to repair, it has been held that he is not so liable, — either in tort, because the failure so to repair is a mere non-feasance, or for substantial damages in contract, because damages for personal injuries are not recoverable for such a breach. *Cavalier v. Pope*, [1906] A. C. 428; *Schick v. Fleischhauer*, 26 N. Y. App. Div. 210. He is, however, liable for the condition of the part of the premises under his control, both to the tenant and to third parties lawfully on the premises, except bare licensees. *Lang v. Hill*, 138 S. W. 698 (Mo.); *Miller v. Hancock*, [1893] 2 Q. B. 177. For personal injuries to third parties, moreover, where he makes a covenant to repair, the landlord is liable for the condition of the demised premises, according to the prevailing view, either because he retains his tort obligation of due care or to avoid circuity of action. *May v. Ennis*, 78 N. Y. App. Div. 552. See *City of Lowell v. Spaulding*, 4 Cush. (Mass.) 277, 279. But, as held in the principal case, in the absence of such a covenant, unless the premises were a nuisance at the time of letting, the landlord has no tort liability toward third persons. *Lane v. Cox*, [1897] 1 Q. B. 415; *Ahern v. Steele*, 115 N. Y. 203.

**MALICIOUS PROSECUTION — BASIS AND REQUISITES OF ACTION — GARNISHMENT RESULTING IN CONSEQUENTIAL DAMAGE.** — The plaintiff's wages were by statute exempt from garnishment, but his employer was accustomed to discharge any workmen whose wages were garnished. The defendant, knowing this, attempted to garnish the plaintiff's wages, and, as a result, the plaintiff was discharged. The plaintiff then brought an action for malicious abuse of process. *Held*, that he may recover. *King v. Yarbray*, 71 S. E. 131 (Ga.).

For a discussion of the principles involved, see 24 HARV. L. REV. 325.

**MECHANICS' LIENS — PRIORITY OVER MORTGAGE FOR FUTURE ADVANCES.** — On a bill in equity to enforce a mechanics' lien for materials furnished, the question was whether a mortgage given to secure future advances to be made under a contract took precedence over the lien as to advances made subsequently to the acquisition of the lien and with no other notice of it than the understanding that the money advanced was to be used in erecting a building. *Held*, that the mortgage takes precedence as to prior advances only. *Allen Co. v. Emerton*, 79 Atl. 905 (Me.).

Like most mechanics' lien statutes, the Maine law simply provides that the lien shall attach to any interest which the owner — that is, the equitable owner — has in the land. REV. STATS. OF ME., 1903, c. 93, § 29. Where land has been mortgaged, the mortgagor's interest obviously includes all rights not already granted to the mortgagee. If the mortgage is given as security for merely optional advances, some courts hold that it has no effect upon the equity of redemption until the advances have been made, and that, consequently, any second incumbrance takes precedence, when recorded, over the first mortgage as to subsequent advances. *Ladue v. Detroit & Milwaukee R. Co.*, 13 Mich. 380. By the weight of authority, however, a recorded mortgage